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Recent Important Decisions

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RECENT IMPORTANT DECISIONS.

Louisville Segregation Ordinance Invalid.—An ordinance of the City of Louisville approved May 11, 1914, provides, in effect, that it shall be unlawful for any white or colored person to move into and occupy as a residence, place of abode, or to establish and maintain as a place of public assembly, any house upon any block upon which a greater number of houses are occupied as residences, places of abode, or places of public assembly by persons of the opposite color. It is also provided that nothing in the ordinance shall be construed so as to prevent the occupancy of residences, etc., by white or colored servants or employes of occupants of such residences, etc., on the block on which they are so employed. The opinion of the Supreme Court of the United States by Mr. Justice Day, in the case of Buchanan v. Warley, 38 Supreme Court Reporter, 16, declaring this ordinance unconstitutional, reads in part as follows:

"As we have seen, this court has held laws valid which separated the races on the basis of equal accommodations in public conveyances, and courts of high authority have held enactments lawful which provide for separation in the public schools of white and colored pupils where equal privileges are given. But in view of the rights secured by the Fourteenth Amendment to the federal Constitution, such legislation must have its limitations, and cannot be sustained where the exercise of authority exceeds the restraints of the Constitution. We think these limitations are exceeded in laws and ordinances of the character now before us.

"It is the purpose of such enactments, and it is frankly avowed it will be their ultimate effect, to require by law, at least in residential districts, the compulsory separation of the races on account of color. Such action is said to be essential to the maintenance of the purity of the races, although it is to be noted in the ordinance under consideration that the employment of colored servants in white families is permitted, and nearby residences of colored persons not coming within the blocks, as defined in the ordinances, are not prohibited.

"The case presented does not deal with an attempt to prohibit the amalgamation of the races. The right which the ordinance annulled was the civil right of a white man to dispose of his property if he saw fit to do so to a person of color and of a colored person to make such disposition to a white person.

"It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution.

"It is said that such acquisitions by colored persons depreciate property owned in the neighborhood by white persons. But property may be acquired by undesirable white neighbors or put to disagreeable though lawful uses with like results."

The ordinance in question was accordingly held to be in direct violation of the fundamental law enacted in the Fourteenth Amendment to the Constitution of the United States, preventing state interference with property rights except by due process of law, and reversed the judgment of the Kentucky Court of Appeals, 177 Southwestern Reporter, 472, upholding its validity.

Husband and Wife—Resulting Trust—Deeds—Evidence.—In a suit by the wife to have a deed conveying land to her husband, or to her and her husband jointly, reformed upon the ground that her money paid for the land and it should have been conveyed to her, it is necessary to show that the money of the wife paid for the land, and that the husband committed a breach of trust by deceiving the wife into believing that the title would be or had been conveyed to her, or by agreeing that it should be so conveyed and breaking the agreement without her knowledge or consent.

Fitzpatrick v. Roark, 179 Ky. 504.

Infant—Desertion—Habeas Corpus.—One Caldwell, a minor, on October 13, 1916, without the consent of his natural guardian, enlisted in the Alabama National Guard, which, prior to that time, had been mustered into the service of the United States. At the

time he had just passed his seventeenth birthday. He went to the Mexican border with his company, performed his duties, and received his pay for nearly a year, all with the knowledge of his guardian. He accompanied his company to Camp Mills, N. Y., the point of embarkation for France, and voluntarily left his company there without permission and returned home. He was apprehended in Alabama, held under the order of the military authorities, and formal charges alleging desertion were preferred against him. He was awaiting trial by courtmartial, when his guardian filed application for habeas corpus on his behalf.

Petitioner relied upon section 27 of the National Defense Act of June 3, 1916 (Comp. St. 1916, § 1885a), declaring that no person under the age of 18 years shall be enlisted or mustered into the military service of the United States without the written consent of his parents or guardians, provided such minor has such parents or guardians entitled to his custody and control, and insists that this provision renders Caldwell's enlistment void.

Judge Clayton, in the District Court of the United States for the Middle District of Alabama, in the case of Ex parte Rush, 246 Federal Reporter, 172, holds that the statute is for the benefit of the parent or guardian, and gives no privilege to the minor, and that, as between the latter and the United States, his enlistment is valid if he is over 16 years of age, and makes him de jure and de facto a soldier, subject to military jurisdiction; that a parent or guardian, seeking the discharge of a minor son or ward, must make application with reasonable diligence and before the minor has committed any offense against the military law, and if he fails in this respect is not entitled to the minor's custody prior to the expiation of his military offense.

The court quotes from the case of In re Miller, 114 Federal Reporter, 838, 52 C. C. A. 476, in which Judge Shelby, speaking for the court, said: "His enlistment having made the prisoner a soldier notwithstanding his minority, he is amenable to the military law just as the citizen who is a minor is amenable to the civil law. The parents cannot prevent the law's enforcement in either case. It is not reasonable that a minor of age to enlist, who secures the hon

orable and responsible position of a soldier in the United States army, could abandon his colors in the face of the enemy and on the eve of battle, and avoid trial and punishment for desertion by the intervention of his parents, who had not consented to his enlistment, but who had taken no step to avoid it before the soldier's arrest for desertion, or that he could endanger the army by betraying its secrets to the enemy, and not be amenable to military jurisdiction, his parents objecting. We cannot approve a view that leads to such results."

Accordingly an order refusing to discharge the minor was made, and the petition dismissed, but without prejudice.

Corporation—Notice As to Value of Stock.—It is held in Jacquith v. Mason, 99 Neb. 509, 156 N. W. 1041, L. R. A. 1917F, 817, to be the duty of the president and manager of a corporation, who learns that the entire stock of the corporation can be sold at a certain favorable price, and disposes of his own stock accordingly, to inform other stockholders who he knows are anxious to dispose of their stock; and if he fails to do so, but purchases their stock at a less price and immediately sells it at a profit, he will be liable to such stockholders for the profit so realized.

Communication Between Husband and Wife as Privileged When Heard by Bystander.—It is of course well settled that in an action of slander it may be shown as a defense that the alleged slanderous words were spoken in a conversation between husband and wife. That fact gives rise to a qualified privilege. But suppose a bystander overhears the conversation? This question arose in Conrad v. Roberts, 95 Kan. 180, 147 Pac. 795, reported and annotated in Ann. Cas. 1917E 891, and it was held that where the presence of bystanders at a conversation between husband and wife was a mere casual incident, not in any sense sought for by the defendant, the latter would not be deprived of the privilege. In that case the defendant pleaded a qualified privilege that the words were spoken in a conversation with her husband at a time when she understood her husband was liable to be arrested for his conduct with the

plaintiff and another woman where he lived, and that it would result in disgrace being brought upon their family, and that she desired to warn him in the protection of his own interests as well as that of the family. It was held that an instruction charging that if a third person overheard what was said the matter was not privileged unless such person was a mere eavesdropper, was error.

Husband and Wife—Home—Provision Necessary.—It is the duty of a husband to provide a home for his wife, in which she is recognized by its inmates as the household mistress, and when the husband subjects his wife, in the management of her household affairs, to the interference of his mother, who manifests an enmity towards the wife, and by words and acts assails her conduct and reputation to such an extent that she cannot endure it, and leaves the home for that reason, it is held in the New Jersey case of Fraser v. Fraser, 101 Atl. 58, L. R. A. 1917F, 738, that her desertion may be wilfull, but it does not become obstinate, so long as the husband makes no effort to induce her to return to a home freed from the contentious element.

Man Not Responsible for What Live Chicken May Have in His Crop.—Chapter 26 of article 3 of the Ordinances of New York City provides that no turkeys or chickens shall be offered for sale "unless their crops are free from food or other substance, and shrunken close to their bodies." One Baff maintains a slaughter-house in New York City. The secretary of the department of food and markets of the state visited the premises and purchased a chicken, which he selected from one of the chicken "coops along the wall," and had it weighed and paid for it and took it out, and subsequently removed the crop, and found therein "cracked corn meal, looking like a mixture of meal and milk and sand." On these facts the city brought an action to recover the penalty prescribed for a violation of the above ordinance. The Appellate Division of the Supreme Court in the case of City of New York v. Baff, 167 New York Supplement, 1037, in an opinion by Judge Laughlin, held the action not maintainable, and said, adverting to the fact that it did not appear

when, where, or by whom the chicken was killed, "It is manifest that the ordinance relates only to turkeys or chickens offered for sale after they have been slaughtered and dressed."

Liability of Parents for Alienation of Affections of Daughter.—The question suggested by the catchline is thoroughly considered in Kleist v. Breitung, 232 Fed. 1014, Ann. Cas. 1917E 1014 and note. It is there said to be the law that parents are justified in giving counsel and advice to a daughter who has contracted a marriage with a man who is believed by her father to be wholly unfitted to make her happy and to support her properly. If he acts without malice and is prompted by affection for his daughter and solicitude for her health and happiness, he cannot be held liable for alienation. In short, the law takes a practical, common-sense view of such situations as are here disclosed; it recognizes the relation of parent and child as well as the relation of husband and wife and in no case has a parent, who has acted in good faith, been mulcted in damages for advising, protecting and sheltering a daughter who has contracted an ill-advised marriage with a man who is unable to support her properly.

Petition—Filing—Effect Upon Validity of Liens—Judicial Notice of Filing.—While the filing of a petition in bankruptcy operates to nullify all acts as to property sold or held under judicial process within four months prior to that event, except in case of liens given before the four months began, still the State court in which causes are pending is not bound to take judicial notice of the filing of the petition but must have notice through pleadings filed therein.

Coppard v. Gardner, 40 Am. B. R. 777.

Discharge—Right of Partner in Voluntary Proceeding—Effect of Prior Adjudication of Partnership.—A member of a partnership in a voluntary proceeding in bankruptcy is entitled to be discharged from all debts provable against his estate on the date of his adjudication, although in a prior proceeding in bankruptcy against the

partnership no application was made for a discharge and the individual members were not mentioned or adjudicated bankrupts.

Horner v. Hammer, 40 Am. B. R. 817.

Evidence—Photograph—Special Purpose.—The probative value of photographs, it is decided in the Oklahoma case of Colonial Ref. Co. v. Lathrop, 166 Pac. 747, L. R. A. 1917F, 890, depends upon their accuracy. They must be shown by extrinsic evidence to be faithful representatives of the place or subject as it existed at the time involved in the controversy. And photographs taken to show more than this, with men in various assumed positions, and things in various assumed situations, intended only to illustrate hypothetical situations, and to explain certain theories of the parties, are incompetent.